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16 April 1991

ORIGINAL: ENGLISH

UNITED NATIONS CONFERENCE ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

SECOND COMMITTEE

SUMMARY RECORD OF THE 2nd MEETING

Held at the Austria Center Vienna,
on Wednesday, 10 April 1991, at 9.30 a.m.

Chairman: Ms. J. VILUS (Yugoslavia)

CONTENTS

Election of a vice-chairman and a rapporteur (continued)

Consideration of articles 17 to 19, and 21 to 25, of the draft Convention on the Liability of Operators of Transport Terminals in International Trade (continued)

Article 19 (continued)
Article 21
Closing formula

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The meeting was called to order at 10 a.m.

ELECTION OF A VICE-CHAIRMAN AND A RAPPORTEUR (agenda item 2) (continued)

1. Mr. HORNBY (Canada) nominated Mr. Fujishita (Japan) for the office of Vice-Chairman.

2. Mr. GORODISSKY (Union of Soviet Socialist Republics) nominated Ms. Strolz (Austria) for the office of Rapporteur.

3. Mr. Fujishita (Japan) and Ms. Strolz (Austria) were elected Vice-Chairman and Rapporteur, respectively.

CONSIDERATION OF ARTICLES 17 TO 19, AND 21 TO 25, OF THE DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE (agenda item 3) (continued) (A/CONF.152/5, 6, 7 and Add.1 and Add.1/Corr.1 and Add.2)

Article 19 (A/CONF.152/C.2/L.7)

4. Mr. HORNBY (Canada) said that the purpose of the proposed amendment to paragraph 3 of article 19 was to reflect in that article the criteria for the scope of application of the Convention that were contained in subparagraphs 1 (a), (b) and (c) of its article 2.

5. It was standard practice to include a federal-state clause in a private international law convention, and the acceptance of his proposed amendment would facilitate his country's accession to the Convention.

6. He hoped that the Committee would approve the proposal, subject to minor changes by the Drafting Committee.

7. Mr. FUJISHITA (Japan) supported the proposed amendment but thought it was unnecessary to include the word "if" at the beginning of subparagraph (b). However, a decision on that point could be left to the Drafting Committee.

8. Mr. LARSEN (United States of America) supported the proposal, as he believed it was intended to bring about broader application of the Convention.

9. Mr. ZHANG Kening (China) supported the Canadian proposal.

10. Mr. GORODISSKY (Union of Soviet Socialist Republics) had some reservations regarding the proposal. Although he agreed that the provisions of article 2 and article 19 should correspond, Committee 1 had yet to make a decision on article 2.

11. The CHAIRMAN said that articles 2 and 19 were indeed closely connected, and Committee 1 had not yet considered article 2. However, the representative of Canada had indicated that his proposal was subject to adjustment by the Drafting Committee. The Drafting Committee could be instructed to adjust the wording of the proposal so as to bring it into line with any changes that Committee 1 might make to article 2. She suggested that the Committee might wish to approve the Canadian proposal on that understanding.

12. Mr. HORNBY (Canada) confirmed that the Chairman's summary accurately reflected his position.

13. The Canadian proposal was approved, subject to adjustment by the Drafting Committee, by 9 votes to 1, with 3 abstentions.

Article 21 (A/CONF.152/C.2/L.6, L.8)

14. The CHAIRMAN invited the Committee to debate the Philippines amendment (A/CONF.152/C.2/L.8) first, since it was the furthest removed from the original text.

15. Mr. BELLO (Philippines) said the purpose of article 20 was to prevent reservations from being made to the Convention. Article 21, however, provided a loophole for reservations, since declarations could take the form of reservations, and for that reason its deletion was proposed.

16. Mr. FUJISHITA (Japan) said he did not consider article 21 to be incompatible with article 20 since the word "declarations" therein referred only to declarations made under the provisions of article 19 and not to any interpretative declaration made in the context of international public law.

17. Mr. HORNBY (Canada) pointed out that articles virtually identical to articles 20 and 21 were to be found in the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980). The existence of such articles was therefore standard practice in international trade law conventions.

18. Mr. ZHANG Kening (China) said he shared the Japanese view that the declarations referred to in article 21 were those mentioned in article 19. They were therefore not incompatible with article 20.

19. Mr. SOLIMAN (Egypt) said he considered article 21 to be clear and precise. It should be maintained in its present form.

20. Mr. ASTAPENKO (Byelorussian Soviet Socialist Republic) said he, too, considered there to be no direct link between articles 20 and 21. However, in order to avoid confusion and make clear that the declarations referred to in article 21 were those mentioned in article 19, he proposed that the text of the Convention should be rearranged so that those two articles were next to each other and article 20 no longer came between them. The Philippines might find that an acceptable solution.

21. Mr. KEINAN (Israel) said that, for the reasons given by Egypt and Canada, article 21 should be left as originally drafted.

22. Mr. BELLO (Philippines) said his principal objection to article 21 was that it referred declarations to the Convention as a whole; restriction of their application to article 19 might be acceptable.

23. Mr. LARSEN (United States of America) said there appeared to be some confusion over the use of the word "declaration". In treaty practice, States were entitled to make declarations as to the interpretation they gave to a convention, which would remain in effect unless challenged by other Contracting States. The declarations mentioned in article 21 therefore did not pertain to article 19 only, but to the entire Convention. Article 21 should therefore remain unchanged.

24. Mr. FARIDI ARAGHI (Islamic Republic of Iran) said the article should remain as drafted.

25. Mr. BELLO (Philippines) said that the comment by the United States strengthened his concern over the implications of the wording of article 21. However, in view of the lack of support for his proposal, he would withdraw it.

26. The CHAIRMAN invited the Committee to consider the amendment to article 21, paragraphs 1 and 4, proposed by Japan (A/CONF.152/C.2/L.6).

27. Mr. FUJISHITA (Japan) said his delegation's amendment was intended to clarify the point that the declarations mentioned in article 21 referred to those provided for in article 19 only. Provisions similar to those in articles 19 and 21 appeared in many international conventions, and he doubted whether the view that interpretative declarations were possible under the terms of article 21, and especially of its paragraphs 3 and 4, was valid.

28. Mr. SOLIMAN (Egypt) said that the declarations mentioned in article 21 referred to the Convention in its entirety. The text of the article should therefore remain as drafted.

29. Mr. ASTAPENKO (Byelorussian Soviet Socialist Republic) endorsed the proposed amendment. A point of substance was involved. With regard to the United States' reference to interpretative declarations, the Vienna Convention on the Law of Treaties, in its Part III, Section 3, "Interpretation of treaties", nowhere made reference to declarations. Use of a declaration for such a purpose in an international contract could therefore not be considered acceptable. The only way for a State to object to a given provision in a convention would be by making a reservation, but in the present instance that had been excluded. Although there was nothing to hinder the Conference from adopting provisions to enable States to make declarations giving their interpretation of the Convention, that would run counter to the intention of its authors, which was to make the provisions of article 21 refer exclusively to article 19.

30. Mr. ZHANG Kening (China) expressed support for the Japanese amendment and agreed, as proposed by the representative of the Byelorussian SSR, that articles 19 and 21 should be next to each other.

31. Mr. LARSEN (United States of America) said the reference by the representative of the Byelorussian SSR to the coverage of declarations in the Vienna Convention on the Law of Treaties was correct. He therefore had no further objection to the Japanese amendment.

32. Mr. GORODISSKY (Union of Soviet Socialist Republics) said the Japanese amendment was quite acceptable. However, there were other articles of the draft Convention, such as article 23 (Revision and amendment), for which article 21 might have implications. It might therefore be preferable to retain the original wording.

33. Mr. ZHANG Kening (China) said that the representative of the Soviet Union had made an important point. However, he felt the objection could be met by retaining the Japanese amendment with a blank left after article 19 for insertion of the numbers of other relevant articles.

34. The CHAIRMAN put the Japanese amendment (A/CONF.152/C.2/L.6) to the vote, on the understanding that the question of a possible change in the sequence of articles 19, 20 and 21 and the citation of any further article numbers in article 21 would be referred to the Drafting Committee.

35. On that understanding, the amendment was adopted by 9 votes to 5.

Closing formula

36. The CHAIRMAN invited the Committee to consider the last two paragraphs of the draft Convention.

37. The final two paragraphs (closing formula) were adopted and referred to the Drafting Committee, on the understanding that the details of place and time would be inserted subsequently.

The meeting rose at 11 a.m.

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UNITED NATIONS CONFERENCE ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

SECOND COMMITTEE

SUMMARY RECORD OF THE 3rd MEETING

Held at the Austria Center Vienna,
on Friday, 12 April 1991, at 9.30 a.m.

Chairman: Ms. VILUS (Yugoslavia)

CONTENTS

Consideration of the report of the Drafting Committee to the Committee

Consideration of the report of the Committee to the plenary Conference

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE TO THE COMMITTEE (agenda item 4)

1. Mr. SAHAYDACHNY (Secretary of the Committee), informed the Committee that the report of the Drafting Committee to the Second Committee would be submitted to the Committee for its consideration before it referred the articles of the Convention to the Plenary, and a paragraph to that effect would be inserted into the Committee's report.

CONSIDERATION OF THE REPORT OF THE COMMITTEE TO THE PLENARY CONFERENCE (agenda item 5) (A/CONF.152/C.2/L.2 and Adds.1-3)

2. The CHAIRMAN invited the Committee to consider its draft report to the plenary Conference.

I. Introduction (A/CONF.152/C.2/L.2)

3. The introduction was adopted.

II. Consideration by the Second Committee of the Draft Convention on the Liability of Operators of Transport Terminals in International Trade (A/CONF.152/C.2/L.2 and Adds.1-3)

Articles 17 and 18 (A/CONF.152/C.2/L.2)

4. The section of the draft report concerning articles 17 and 18 was adopted.

Articles 19 and 21 (A/CONF.152/C.2/L.2/Add.1)

5. Mr. ASTAPENKO (Byelorussian Soviet Socialist Republic) said that, although he agreed with the section of the draft report dealing with article 21, the amendments to that article raised an editorial question. Since the Japanese amendment to article 21 (1) now established a clear link with article 19, the provision in article 21 (2) concerning notification of declarations was largely superfluous, since it was almost identical to paragraph 2 of article 19 (2). He accordingly proposed that paragraph 2 of article 21 should be deleted and, for reasons of consistency, that the words "in writing" should be inserted after the word "notified" in article 19 (2).

6. The CHAIRMAN said that the Committee's proposals on all articles would be referred to the Drafting Committee. She took it that the Committee agreed to refer the proposal by the representative of the Byelorussian SSR to the Drafting Committee.

7. It was so decided.

8. The section of the draft report concerning articles 19 and 21 was adopted.

Articles 22 to 25 (A/CONF.152/C.2/L.2/Add.2)

9. The section of the draft report concerning articles 22 to 25 was adopted.

Final, formal clauses of the Convention (A/CONF.152/C.2/L.2/Add.3)

10. The section of the draft report concerning the final, formal clauses of the Convention was adopted.

11. The report of the Committee was adopted, subject to consideration of the report of the Drafting Committee to the Committee.

The meeting rose at 10.25 a.m.

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UNITED NATIONS CONFERENCE ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

SECOND COMMITTEE

SUMMARY RECORD OF THE 4th MEETING

Held at the Austria Center Vienna,
on Monday, 15 April 1991, at 11.45 a.m.

Chairman: Ms. VILUS (Yugoslavia)

CONTENTS

Consideration of the report of the Drafting Committee to the Committee (continued)

Consideration of the report of the Committee to the plenary Conference (continued)

Completion of the Committee's work

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The meeting was called to order at 11.45 a.m.

CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE TO THE COMMITTEE (agenda item 4) (continued) (A/CONF.152/C.2/L.9)

1. Mr. RAO (India), speaking as the Chairman of the Drafting Committee, introduced the report of the Drafting Committee to the Second Committee (A/CONF.152/C.2/L.9) and suggested that the Secretary of the Drafting Committee should be requested to indicate the changes it had made in the text of the articles approved by the Second Committee.

2. Mr. BERGSTEN (Executive Secretary), speaking as the Secretary of the Drafting Committee, said that it had filled in the two blank spaces in paragraph 1 of article 18 by inserting the full title of the Conference and the words "30 April 1992". After some discussion, generated by a suggestion made in the Second Committee by the Byelorussian delegation (A/CONF.152/C.2/SR.3), the Drafting Committee had decided to delete the words "are to be notified to the depositary and" from article 19 (2). No change had been made in the text of article 19 (3) referred to the Drafting Committee by the Second Committee in the light of the First Committee's decision on article 2.

3. In article 20, which had previously been article 21, the Drafting Committee had, at the request of the Second Committee, replaced the words "under this Convention" in paragraphs 1 and 4 by the words "under article 19". Likewise at the suggestion of the Second Committee, it had reversed the order of articles 20 and 21 and in article 25 had inserted a cross-reference to paragraph 8 of article 24. The date would be inserted in the penultimate clause of the Convention after the signing ceremony.

4. Replying to Mr. TUVAYANOND (Thailand), Mr. BERGSTEN (Executive Secretary) explained that the date of 30 April 1992 had been inserted in article 18 (1) following the agreement reached in the Second Committee that the Convention should remain open for signature for approximately one year after the concluding meeting of the Conference.

5. Articles 17 to 25 were approved.

CONSIDERATION OF THE REPORT OF THE COMMITTEE TO THE PLENARY CONFERENCE (agenda item 5) (continued) (A/CONF.152/C.2/L.2 and Add.1-3)

6. Mr. SAHAYDACHNY (Secretary of the Committee) said that the Committee had adopted sections I and II of its report at the previous meeting. He invited it to add the following text to the report:

"III. Consideration of the report of the Drafting Committee to the Committee

At its fourth meeting, held on 15 April 1991, the Second Committee received the report of the Drafting Committee to the Second Committee containing the texts of articles 17 to 25, as approved by the Drafting Committee (A/CONF.152/C.2/L.9). The Second Committee referred those articles to the Plenary."

7. Section III of the Committee's report was adopted.

8. Mr. ZHANG Kening (China) said that his delegation had been surprised to find that the Chinese version of document A/CONF.152/C.2/L.9 reproduced the texts of articles 17 to 25 as they appeared in document A/CONF.152/5.

9. Mr. BERGSTEN (Executive Secretary) said that all necessary corrections to the various language versions of articles 17 to 25 should be brought to the attention of the Secretariat. They would be incorporated in the document containing the final version of the report of the Second Committee to the plenary Conference.

COMPLETION OF THE COMMITTEE'S WORK

10. The CHAIRMAN announced that the Committee had completed its work.

The meeting rose at 12.15 p.m.